IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

CRP.No. 1027 of 2002(A)

(AGAINST THE ORDER DATED 21/12/2001 PASSED IN EA.571/2000 IN EP.17/1999 ON THE FILE OF SUBORDINATE JUDGE'S COURT AT PALAKKAD)

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PETITIONER: PETITIONER/JUDGMENT DEBTOR:

BALAN S/O. MURUKANDI,
THOZHUTHUMPARA, KIZHAKKENCHERRY AMSOM,
ALATHUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.JEBY JACOB

RESPONDENTS:RESPONDENTS/DECREE HOLDER & AUCTION PURCHASER:

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1. **BABY, S/O. PAILY, ERUKKINCHIRA,**
   KIZHAKKENCHERRY AMSOM, ALATHUR TALUK,
   KORENCHIRA POST, PALAKKAD DIST.

2. **V.K. SUBHASH, S/O. KRISHNANKUTTY,**
   VATTUPARA VEEDU, KORENCHIRA POST,
   ALATHUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.P.HARIDAS for R2
SRI.O.RAMACHANDRAN NAMBIAR for R2
SRI.V.GIRISHKUMAR for R2
SMT.C.R.SARADAMANI for R1

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 01/08/2007 ALONG WITH CRP NO. 1039 OF 2002, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.NO.2647/2002 IN C.R.P.NO.1027/2002

DISMISSED

1/08/2007 **SD/-PIUS C. KURIAKOSE, JUDGE**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE,J.

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C.R.P.Nos.1027 & 1039 of 2002

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Dated: 1st August, 2007

ORDER

C.R.P.No.1039 of 2002 is instituted by the judgment-debtor against the order in E.A.No.619/2000 which was an application filed by the petitioner under Sections 47 and 151 of the C.P.C. seeking to set aside the order of sale on the ground that there has been material irregularities and fraud in the matter of conduct of sale. In fact the petitioner himself had filed E.A.No.332/2000 under Order XXI Rule 89 for setting aside sale after making requisite deposit. But E.A.No.332/2000 was not filed on time. For condoning the delay of one day caused in the matter of E.A.No.332/2000, the petitioner had filed E.A.No.571/2000. Under the impugned order the learned Subordinate Judge dismissed E.A.Nos.332, 571 and 619 of 2000 by passing a common order. C.R.P.No.1027/02 is instituted by the judgment-debtor against the order in E.A.No.571/2000.

2. Heard Mr.Sajan Varghese, learned counsel for the petitioner, Mr.O.Ramachandran Nambiar, counsel for the 2nd respondent and Smt.C.R.Saradamani, counsel for the 1st respondent.

3. On going through the impugned order what I notice is that the learned Subordinate Judge after finding that E.A.No.571/2000

was not maintainable in law since the execution court had no power at all for condoning the delay caused in the matter of filing execution application, decides to dismiss that application and dismiss the other two applications also in view of the decision taken in E.A.No.571 of 2000. The maintainability of an application under Section 47 like the present one (E.A.No.619/2000) is not seen considered independently by the learned Subordinate Judge. According to me, notwithstanding the learned Subordinate Judge's decision on the delay petition, E.A.No.619/2000 could have been considered or the learned Subordinate Judge could have at least assigned reasons as to why the petitioner is not entitled to relief in E.A.No.619/2000. As for the decision to dismiss E.A.No.571/2000, the learned Subordinate Judge cannot be blamed. However since E.A.No.619/2000 was liable to be independently considered since the petitioner can have an arguable case that the issue arises within the scope of Section 47 C.P.C.

4. I set aside the order which is impugned in C.R.P.No.1039/2002 and allowing that C.R.P. directing the learned Subordinate Judge to take a fresh decision on E.A.No.619/2000 after hearing both sides. The parties will be permitted to adduce evidence

in support of their rival contentions in the E.A. As for order which is impugned in C.R.P.No.1027 of 2002 since the view of the learned Subordinate Judge cannot be found faulty, the same will stand approved and that C.R.P. will stand dismissed.

5. I also clarify that I have not stated anything finally regarding the merits/maintainability of E.A.No.619/2000.

srd **PIUS C.KURIAKOSE, JUDGE**